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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SACRAMENTO
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11 BILL CAMP,

12 Plaintiffs,

Case No.: 34-2009-00065404

13 vs.

RULING ON SUBMITTED MATTER

14 THE CITY OF SACRAMENTO, a California
15 municipal corporation and a chartered City;
16 THE SACRAMENTO CITY COUNCIL, the
governing body of the City of Sacramento, and
THOMAS W. HILTQACHK,

17 Defendants.
18

19 The Court, having taken this matter under submission, vacates the tentative ruling and now rules
20 as follows.

21 Plaintiff Bill Camp's Motion for Preliminary Injunction is granted.

22 Plaintiff seeks an order enjoining defendants City of Sacramento and the
23 Sacramento City Council, and all of their agents, from taking any and all actions in the furtherance of
24 presenting the initiative measure entitled "Government Reform and Accountability Act of 2009" (the
25 "Strong Mayor Initiative" or "SMI") to the voters until a final adjudication is made as to the legality of
26 submitting that measure to the voters, on the grounds that the SMI is an unconstitutional effort to revise
27 the Sacramento City Charter by initiative measure.
28

1 Defendant Hiltachk opposes the preliminary injunction. Defendant City of
2 Sacramento takes no position on whether the proposed SMI is an amendment or a revision to the City
3 Charter, but requests the Court to conduct a pre-election review and decide the merits of the dispute
4 now, to avoid negative consequences and the expenditure of funds if the initiative is deemed invalid
5 after the June election is held.

6 Plaintiff's Request for Judicial Notice is granted.

7 Plaintiff's Objections to Thomas W. Hiltachk Declaration, Exhibit C, are
8 sustained, the remainder are overruled.

9 Defendant Hiltachk's objection to the additional exhibits included with the reply papers is
10 granted.

11 **Summary of the Facts**

12 On August 6, 2009, the City Clerk informed the City Council that the SMI had obtained a
13 sufficient number of signatures to qualify for the ballot. The City Attorney advised the City Council that
14 it had a duty to present it to the voters. The City Council voted to place the SMI on the June 8, 2010
15 ballot.

16 The SMI proposes to completely overhaul the structure of city government currently set forth in
17 the City Charter by replacing the existing "council-manager" form of city government with a "strong
18 mayor" form. Whereas the Charter currently vests "all powers of city government" in the City
19 Council (of which the Mayor is a member), the SMI would establish a separate Executive branch of city
20 government headed by the Mayor, who would possess all executive powers and duties formerly vested
21 in the City Council and delegated by the Council to the City Manager's office.

22 The SMI would also grant the Mayor new and additional powers over the legislative affairs of
23 the City. Whereas the City Charter currently provides that the Mayor shall have no veto authority, the
24 SMI would provide the Mayor with authority to veto all legislative enactments by the City Council and,
25 until the election of a new ninth City Council member, would permit the Mayor to cast a vote as a
26 member of the City Council against overriding any such veto.

1 The SMI would further diminish the legislative authority currently vested in the
2 City Council by providing the Mayor with nearly autonomous authority over enactment of the City
3 budget.

4 The City Attorney advised the City Council in Sept 2009 that the SMI was likely an
5 unconstitutional attempt to revise the Charter because it was not proposed in accord with the procedures
6 for charter revisions set forth in Art. XI, §3 of the California Constitution. The City Council has
7 nonetheless placed it on the June 2010 ballot in accord with the Elections Code requirements for
8 qualified initiatives.

9 **Legal Standard for Issuance of an Injunction**

10 In deciding whether to issue a preliminary injunction, a court must weigh two "interrelated"
11 factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative
12 interim harm to the parties from issuance of the injunction. The greater the plaintiff's showing on one,
13 the less must be shown on the other to support an injunction. *Butt v. State of California* (1992) 4 Cal.4th
14 668, 677-678. A preliminary injunction may not be granted, regardless of the balance of interim harm,
15 unless it is reasonably probable that the moving party will prevail on the merits. *San Francisco*
16 *Newspaper Printing Co. v. Superior Court* (1985) 170 Cal. App. 3d 438,442.

17 **Contentions of the Parties**

18 Moving party plaintiff asserts that the SMI is not simply an "amendment" of the City Charter,
19 but a "revision," which is a change in the basic structure of government or in the manner in which power
20 is allocated among the various branches of government, and thus violates the California Constitution,
21 Art. XI § 3(a).

22 Opposing party Hiltachk asserts that the SMI should not be treated as a "revision" of the Charter
23 and makes five main arguments in support of his contention: (1) the SMI is only an amendment and
24 does not significantly change the basic framework of city government. (2) The Court should ignore and
25 decline to apply Supreme Court jurisprudence regarding the meaning of "revision" and "amendment"
26 when applied to efforts to amend the State Constitution. (3) The SMI must be treated as an amendment
27 given the words of Article XI, section 5 of the California Constitution. (4) A decision removing this
28 measure from the ballot improperly affects the people's right to vote on an initiative measure. (5)

1 Government Code §§ 34851 and 34858 compel a decision that the proposal is an amendment properly
2 put before the voters for a vote. (This assertion was first raised by defendant Hiltachk at oral argument,
3 and moving party has not had the opportunity to respond to it.)

4 All of these contentions are discussed below.

5 **Likelihood of Prevailing on the Merits**

6 The resolution of this dispute turns on whether the SMI is a “revision” or “amendment” of the
7 City Charter. This case is one of first impression, as no published California case has applied the
8 “amendment” versus “revision” analysis to City Charters, under Cal Const, Art. XI § 3.

9 Although the State Constitution allows for its amendment by initiative, it prohibits direct
10 presentation of state constitutional “revisions” to the voters through the initiative process. Cal Const, Art.
11 XVIII, § 3. Section 3 provides that voters may propose an “amendment” by initiative, but a
12 constitutional “revision” must be proposed by the Legislature, upon two thirds vote of both houses to a
13 general election of the voters or a constitutional convention. Cal Const Art. XVIII, § 2.

14 Here, in the absence of other guidance from the appellate courts, the Court chooses to interpret
15 the terms “revision” and “amendment” as the Supreme Court has done when faced with similar disputes
16 when interpreting those terms as used in Article XVIII, § 3. See *Richmond v. Shasta Community*
17 *Services Dist.* (2004) 32 Cal. 4th 409, 422.

18 The Court is not persuaded by defendant Hiltachk’s contention that the analysis and
19 interpretation of these same words by the Supreme Court is inapplicable here, because the “revision”
20 and “amendment” analysis only applies at the state government level, not to the local level. This
21 assertion is supported by no legal authority; indeed, the applicable authority is to the contrary. The
22 Supreme Court has affirmed “the rule that when a term has been given a particular meaning by a judicial
23 decision, it should be presumed to have the same meaning in later-enacted statutes or constitutional
24 provisions.” *Richmond v. Shasta Community Services Dist.*, supra, 32 Cal. 4th at 422.

25 In essence, defendant Hiltachk urges this Court to engage in “judicial activism” and embark on
26 its own path, ignoring Supreme Court decisions that involve similar disputes using the same words. The
27 Court declines the invitation to make up its own law to apply to this dispute, and instead opts to follow
28 the analysis and reasoning that the Supreme Court has applied when faced with similar questions. The

1 Court determines that the principles of law that apply to initiative measures proposed to be placed before
2 the voters of the state regarding state legislation, should also apply to initiative measures proposed to be
3 placed before the voters of the city regarding city legislation, given that the two applicable constitutional
4 provisions use the same words.

5 The California Supreme Court has distinguished state constitutional “amendments” which are the
6 proper subject of an initiative, from constitutional “revisions” which are not the proper subject of an
7 initiative to be placed before the voters for a vote. The Supreme Court has recently prepared an
8 exhaustive analysis of all cases dealing with the revision/amendment analysis. *Strauss v. Horton* (2009)
9 46 Cal. 4th 364.

10 The Supreme Court has explained that the reason why initiative measures that constitute
11 revisions are barred from being placed on the ballot is that “the revision provision is based on the
12 principle that ‘comprehensive changes’ to the Constitution require more formality, discussion and
13 deliberation than is available through the initiative process.” *Legislature v. Eu* (1991) 54 Cal.3d 492,
14 506. That same analysis is applicable here.

15 The California Constitution authorizes a city to adopt a charter for its self government. Cal
16 Const, Art. XI § 3(a) Cal Const, Art. XI § 3(b) provides that a the governing body or charter commission
17 of a city may propose a charter or “revision”. However, an “amendment” or repeal may be proposed by
18 initiative or by the governing body. Subsection (c) provides that: “An election to determine whether to
19 draft or “revise” a charter and elect a charter commission may be required by initiative or by the
20 governing body.”

21 The analysis of whether a change to the constitution is an “amendment” or a “revision” may be
22 based on either quantitative or qualitative effects. *Strauss v. Horton*, supra, 46 Cal. 4th at 427. The
23 Court applies this analysis to the case at bar as follows.

24 *Qualitative Effects*

25 Plaintiff asserts that the SMI is not the product of the public process of an elected charter
26 commission, as required for revisions, but was drafted by a small number of private persons, without
27 affording the public any opportunity to for deliberation and debate to shape the changes proposed,
28 before the public votes on the SMI. An initiative such as the SMI that directly proposes revisions is an

1 end-run around the process prescribed by the state constitution. In *Strauss v. Horton, supra*, 46 Cal. 4th
2 364, 427, the Supreme Court looked to its prior decisions to reaffirm that a measure constitutes a
3 qualitative constitutional “revision”, if it “substantially alter[s] the basic governmental framework” or
4 makes “a sweeping change . . . in the distribution of powers made in the organic document.” *Strauss v.*
5 *Horton, supra*, 46 Cal. 4th at 441, 433.

6 There is no dispute between the parties that the adoption of the SMI would change the structure
7 of the City government provided for in the City Charter from the current council-manager form to a
8 strong mayor form of municipal government. Moving party contends that the complete restructuring of
9 the Sacramento City government proposed by the SMI, would constitute a charter “revision” under the
10 Supreme Court analysis of *Strauss*.

11 Both sides have prepared charts that compare the changes proposed by the SMI with what exists
12 today. Plaintiff’s chart is attached as Exhibit R to the Cody Declaration filed December 1, 2009.
13 Defendant Hiltachk’s chart is attached as Exhibit D to his declaration filed January 4, 2010. These
14 charts are attached hereto as Appendix A and B, respectively. Viewing the changes in city government
15 that are set forth in the two charts, one would be hard pressed to determine that such sweeping changes
16 constitute only an amendment and not a revision.

17 If the SMI were enacted, the existing branches of city government would be completely
18 restructured, creating a separate executive branch of government headed by the Mayor, and transferring
19 all executive authority formerly held by the City Council and the City Manager to the Mayor. The
20 Mayor shall appoint, discipline and remove all the City Charter officers - City Manager, City Clerk, City
21 Treasurer, and City Attorney.

22 The legislative authority of the City Council would also be altered, with the Mayor having veto
23 authority over all ordinances passed by the City Council, including retaining the authority to cast the
24 deciding vote against any vote to override such a veto, until the newly created ninth City Council seat is
25 filled in 2011 or 2012.

26 The Mayor would be given almost all of the budgetary authority currently vested in the City
27 Council. The Mayor would propose the City budget, and solely determine what information is provided
28 by City departments to assist in the preparation of the budget. Overriding the budget would require six

1 votes of the City Council, and again the Mayor could cast a vote against override until the ninth Council
2 seat is filled. In case of an impasse between the Mayor and the Council, the budget for the new fiscal
3 year would be deemed automatically approved without a vote by the Council, reducing any incentive the
4 Mayor would have to work cooperatively with the City Council. This control over the City's financial
5 affairs is a further qualitative revision to the Charter under *Strauss*.

6 In opposition, defendant Hiltachk argues that the proposed changes constitute an amendment, not
7 a revision of the Charter. He asserts that the transfer of powers of appointment is only from the City
8 Manager to the Mayor, not from the City Council. However, the Charter currently grants *all* powers to
9 the Council, which delegates some powers of daily management to the City Manager, while the Council
10 retains ultimate power over the executive function, including the power to appoint and remove the City
11 Manager.

12 Defendant Hiltachk contends that the SMI would transfer the power of appointment from the
13 City Manager to the City Mayor, and is properly accomplished by an amendment, not a by a revision of
14 the charter. Hiltachk relies upon Cal. Const, Art. XI § 5 (b) contending that it grants authority, to
15 provide in a city charter *or by amendment thereto*, for the "manner" of electing or appointing municipal
16 officers. However, Art. XI § 5 expressly states it is subject to the restrictions of this article, which
17 includes the procedures set forth in Art. XI § 3, distinguishing a "revision" by the governing body or
18 charter commission of a city from an "amendment" or repeal by initiative. A fundamental tenant of
19 constitutional construction is to read all of the provisions together giving effect to each provision. While
20 it may be true that some proposal for a strong mayor government may constitute an amendment, section
21 5 does not give a pass to those proposals that are so broad and far-reaching as the one here, that they
22 constitute a revision. If such a proposal is a revision, then it must follow the procedure set forth in
23 Article XI, section 3.

24 Defendant Hiltachk contends the SMI offers only a few changes to the charter that are relatively
25 insignificant. (See Appendix B hereto). However, "even a relatively simple enactment may accomplish
26 such far reaching changes in the nature of our basic governmental plan as to amount to a revision. . ."
27 *Raven v. Deukmejian* (1990) 52 Cal.3rd 336, 351-352. The SMI, if enacted, would clearly change "the
28

1 nature of . . . [the City's] governmental plan.” Hence, the SMI must be deemed to be a revision of the
2 City Charter.

3 *Quantitative Effects*

4 Quantitatively, a measure will constitute a revision if it proposes numerous changes to the
5 entirety of an organic document.

6 The number of Charter articles changed added or deleted by the SMI (nine of the 19 Articles, 45
7 of the Charter's 151 sections) should be deemed a quantitative revision, and another reason why the SMI
8 is a revision and not merely an amendment.

9 The Court finds that Plaintiff has shown a likelihood of prevailing on the merits at trial or by
10 dispositive motion.

11 **Other Contentions**

12 Most of Defendant's contentions have been discussed above. Those that have not been fully
13 dealt with above are discussed here.

14 *1. This ruling means that only the political body can decide to reform itself.*

15 Such an assertion is patently false as even the most casual reading of Article XI, section 3 would
16 reveal. Subsection (b) provides that a city's charter may be revised by either the governing body **or by a**
17 **charter commission**. Subsection (c) provides that a determination whether to revise a charter and elect
18 a charter commission may be required by an initiative. Hence, clearly the people by an initiative
19 measure can decide to revise the charter; that power does not lie exclusively with the governing body.

20 *2. This ruling is “anti-democracy” and takes away the people's right to vote to reform their* 21 *government.*

22 This claim, while attention-getting, is also false. As noted above, the people by initiative may
23 decide to revise the Sacramento City Charter and can elect a charter commission to do so. In any event,
24 whether a revision to the Charter is proposed by such an elected charter commission or by the City
25 Council, the proposed revision must be put before the voters for approval. Cal.Const. Art. XI, §3(a).
26 The only difference between the process followed by revision and an amendment is that the former
27 requires a drafting and vetting process, by either the elected charter commission or by the city council,
28 before it is placed on the ballot for the vote of the people. **The people ultimately have the right to**

1 **vote the proposal up or down.** The state government follows a similar procedure when dealing with a
2 proposed revision of the Constitution. The state procedure requires that a “revision” be vetted by an
3 appropriate body before it is placed on the ballot for a vote. See Cal..Const., Art. XVIII, § 2 and 3.
4 Hence, the requirement of a vetting a “revision” by a proper body before placing the measure on the
5 ballot for a vote of the people cannot be deemed “anti-democracy.” Such a requirement is set forth in
6 the Constitution.

7 *3. Government Code sections 34851 and 34858 provide that a city manager form of government*
8 *may be established and eliminated by an initiative measure placed before the people for a vote. These*
9 *provisions should apply to a proposed strong mayor form of government.*

10 This contention was first raised by Defendant Hiltachk at oral argument. Although the Court
11 would be justified in refusing to consider such late-made claim, especially since Plaintiff has not had an
12 opportunity to respond, the Court will nevertheless consider it.

13 Even if it is assumed that these provisions apply to the establishment of a strong mayor form of
14 government, any initiative must still comply with Article XI, § 3 of the California Constitution, and not
15 be so far-reaching as to constitute a revision instead of an amendment. A constitutional provision
16 always trumps a statute in case of conflict.

17 *4. The Constitution generally gives a free hand to local governments to arrange their own*
18 *affairs.*

19 This contention overstates the city – state relationship. Cities are “subordinate governmental
20 instrumentalities created by the State.” *Ysursa v. Pocatello Education Association* (2009) ____ U.S. ____,
21 1293, 1100 (decided February 2009). The state remains free to withdraw powers ceded to the city as it
22 may see fit. *Id.* The State has never ceded any power to cities to ignore the provisions of Art. XI,
23 section 3 when revising/amending their charters. Further, the Court is not free to disregard this
24 constitutional provision.

25 *5. Other cities have changed from Council-Manager form to Strong Mayor form by amendment*
26 *to the charter that the people voted on.*

27 This assertion may be true, but is not helpful in deciding this case. For example, in other cities,
28 the matter may have been placed before the voters after a vetting process by the local governing body or

1 a charter commission. There may have been no legal challenge made to what could constitute a
2 revision. The change in type of government may have not been as far reaching as in this case. The
3 point is that each proposal to amend or revise a city charter stands on its own unique facts and whether
4 or not it is challenged in the courts.

5 **Relative Interim Harm to the Parties**

6 Plaintiff as a resident and taxpayer would suffer irreparable harm by the continued expenditure
7 of City staff time and financial resources in presenting SMI to the voters.

8 The City asserts that there is harm to the election system by the presence of an invalid measure
9 on the ballot, which confuses and frustrates the voters, and denigrates the legitimate use of the initiative
10 system. The City will incur direct costs, if judicial resolution is deferred until after the election, as the
11 SMI is the sole measure on the June 8, 2010 ballot, and the cost to the City of the election will be
12 approximately \$104,000, in difficult financial times.

13 Further, there will be operational and practical harms from proceeding with the election prior to
14 resolution of the action, as there will be uncertainty as to the Mayor's role on the City Council, labor and
15 employment uncertainties, uncertainty in contracting, issues regarding the creation of the ninth council
16 district, empty seats on board and joint powers authorities, and uncertainty about settlement authority.
17 See City's brief, pp. 7-10 (Attached to this decision as Appendix C.)

18 By contrast the City would suffer no harm if an injunction were granted, as it would not be
19 required to expend staff and financial resources on an unconstitutional effort to revise the Charter. If the
20 Court ultimately determines that the SMI can lawfully be submitted to the voters, it can be done at a
21 subsequent election. Election Code §9255.

22 The balance of the hardships weighs in favor of the issuance of an injunction, pending
23 determination of the merits of this action.

24 Because SMI is an initiative that seeks to revise and not merely amend, and not a proposal by the
25 City Council or an elected charter commission, the City must be enjoined from presenting it to the voters
26 on the June 2010 ballot.

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28 ////

1 **Pre-election vs. Post-election Review**

2 A proposed measure may be subject to *pre-election* judicial review, instead of considered by a
3 court only *after* the measure has been submitted to the voters and the election has been held, where the
4 measure is not legislative in character or because it amounts to a constitutional revision rather than an
5 amendment. *Costa v. Superior Court* (2006) 37 Cal. 4th 986, 1005.

6 The often preferred course for a court to take regarding a challenge to an initiative matter is to
7 delay consideration of the issue until after the election. If the measure is defeated, the matter is moot
8 and the Court need do nothing.

9 Defendant Hiltachk has argued that the Court should wait until after the election and then can
10 sever out provisions that violate the Constitution. There are two significant problems with this
11 argument: First, the basis of the ruling here is that the SMI is a revision and not a mere amendment.
12 That determination is not affected by the outcome of the election, so there is no point to waiting until
13 after the expense of an election is incurred to make the ruling. Second, to argue that the Court could
14 sever portions of the initiative after the voters had passed would put the Court in the position of
15 redrafting the measure if it passed.

16 Obviously, the easiest course for the Court to follow is to duck the issue and opt for post-election
17 review only if the measure passes. However, both the Defendant City and the Plaintiff have urged this
18 court to conduct pre-election review. The City has persuasively argued that because of the circumstance
19 attendant to the initiative and its validity as drafted, the Court should decide the matter before the
20 expense of an election is incurred and so the City will not be burdened with uncertainty that could affect
21 many aspects of the City's operation (See relevant portion of Defendant City's Memorandum attached
22 hereto as Appendix C).

23 The Court is persuaded that this is the rare case where the significance of the reasons that call for
24 pre-election review significantly outweigh the usual reasons for opting for post election review. See
25 *Senate of the State of California v. Jones* (1999) 21 Cal.4th 1142, 1153 (pre-election review is
26 appropriate when the challenge asserts that "the proposed measure may not properly be submitted to the
27 voters . . . because it amounts to a constitutional revision rather than an amendment.")

1 As the California Supreme Court explained, “[I]t is logical and appropriate for a court to
2 consider such a claim prior to the election because if the threshold procedural prerequisites have not
3 been satisfied the measure is not entitled to be submitted to the voters.” *Costa v. Superior Court*, supra,
4 37 Cal. 4th at 1006. The Supreme Court also observed that a dispute such as this is properly subject to
5 pre-election review since the question before the Court is “whether the measure [is properly] qualified
6 for the ballot, and not upon the validity or invalidity of the measure were it to be approved by the voters.”
7 *Id.*

8 **Undertaking**

9 On granting an injunction, the court must require an undertaking on the part of the applicant to
10 the effect that the applicant will pay to the party enjoined any damages, not exceeding an amount to be
11 specified, the party may sustain by reason of the injunction, if the court finally decides that the applicant
12 was not entitled to the injunction. C.C.P. § 529. Here, proof of an undertaking in the amount of \$1,000
13 shall be provided by the plaintiff.

14 **Ruling**

15 The Court recognizes the right of the people to vote on initiative measures placed on the ballot.
16 The Court does not lightly dismiss such, and has taken this very important right into consideration in
17 ruling on this matter. However, as numerous decisions of the California Supreme Court have explained,
18 "although the initiative process may be used to propose and adopt amendments to the California
19 Constitution, under its governing provisions that process may not be used to revise the state
20 Constitution. (Citations omitted.)” *Strauss v. Horton* (2009) 46 Cal. 4th 364, 386. The right of the
21 people to vote on the measure is preserved, with the vote taking place after the proposal is properly
22 vetted by the Charter Commission or the City Council.

23 The same legal principle should to be applied to revisions to city charters. In reaching this
24 decision the Court has relied on various opinions of the California Supreme Court cited herein in order
25 to determine whether this proposed initiative is a revision or an amendment to the City Charter. As noted
26 above, such analysis inexorably leads to the conclusion that the proposed initiative is a revision to the
27 City Charter, and as such is not properly placed on the ballot for a vote of the people. See *Strauss v.*
28 *Horton*, supra, 46 Cal.4th at 386, and cases cited therein. However, the people, by initiative, may elect a

1 Charter Commission charged with the duty of publicly vetting the proposed revision, and then
2 submitting it to the voters for approval. See Cal.Const. Art. XI, § 3(b) and (c).

3 Whether the Strong Mayor form of government is preferable to a City Manager form of
4 government is not before this Court for decision. The Court expresses no view regarding such.

5 The motion for preliminary injunction is granted.

6 Moving party shall submit a formal order for the Court's signature, pursuant to C.R.C., Rule
7 3.1150.

8
9 Dated: January 20, 2010 .



LOREN E. McMASTER
Judge of the Superior Court

APPENDIX A

Exhibit R

Comparison Chart of Current Sacramento Charter and Proposed Strong Mayor Initiative

Sources: Sacramento City Charter ("Charter"); Text of the Government Accountability and Charter Reform Measure of 2009 ("Strong Mayor Initiative" or "SMI"); and Supplemental Materials, *Workshop: Report Back on Charter Reform and City Governance*, Prepared by the City Attorney for the City Council Meeting of February 3, 2009.

	Current Sacramento Charter	Proposed Strong Mayor Initiative
<u>Current Form of Government</u>	Council-Manager: City Council consists of eight members elected by district and the Mayor, who is elected by the voters at-large. (Charter § 21.) The members of the City Council and the Mayor each have a single vote on matters before the Council. (Charter § 40(b)(4).)	Strong-Mayor: City Council consists of nine members elected by district and the Mayor elected by the voters at-large. Mayor is no longer a member of the City Council and takes on the role of chief executive with various other powers, such as the veto power and various powers of appointment and removal, as discussed below. (SMI §§ 21, 40(b)(4).)
<u>Distribution of Power</u>	" <i>All powers</i> of the city shall be vested in the city council except as otherwise provided in this Charter." (Charter § 20 [italics added].) ¹	" <i>All legislative and quasi-judicial</i> powers of the city shall be vested in the city council except as otherwise provided in this Charter." (SMI § 20.)
<u>Ninth City Council Seat</u>	Mayor sits as the ninth member of the City Council. (Charter § 21.)	Creates a ninth council district to be filled at some time to be determined after the 2010 census. Until the seat is filled, the Mayor serves as in executive capacity as Mayor and in legislative capacity as a ninth member of the City Council. (SMI § 30(c).)

¹ Unless otherwise noted, all italics are added for purposes of comparison.

<p><u>Allocation of Executive Power</u></p>	<p>City Manager, appointed by the City Council, is the "chief executive officer" of the city ... responsible for the effective administration of the city government." This power includes:</p> <ul style="list-style-type: none"> • The duty to enforce laws and ordinances; • Administration and supervision over "all offices, departments and services of the city government;" • Acting in an advisory capacity to the City Council; • Making recommendations to the Mayor and City Council; • Attending all regular and special meetings of the City Council with the right to participate in discussion of pending matters; • Executing all city contracts, leases, and franchises on behalf of, and under authorization by, the City Council; • Seeing that city contracts are executed and performed in manner faithful to the interests of the City; and, • Performing other duties prescribed by the Charter or delegated by the City Council. <p>(Charter § 61.)</p> <p>Mayor has "primary, but not exclusive, responsibility of interpreting the policies, programs and needs of city government" (Charter § 40(b)(2).)</p>	<p>Mayor is the "chief executive officer" and assumes <i>all</i> duties formerly conferred upon the City Manager. (SMI § 40(a), (b)(5).). The City Manager is appointed by the Mayor, subject to a concurrence of the City Council, and must serve at the pleasure of the Mayor. (SMI § 60.)</p> <p>Mayor assumes "<i>the</i> responsibility of interpreting the policies, programs and needs of city government" (SMI § 40(b)(2).)</p>
<p><u>Appointment Powers</u></p>	<p>Charter Officers: <i>City Council appoints</i> the City Manager, City Clerk, City Treasurer, and City Attorney. (Charter §§ 60, 70.)</p>	<p>Charter Officers: <i>Mayor appoints</i> the City Manager, City Clerk, City Treasurer, and City Attorney, subject to the concurrence of a majority of the City Council. (SMI §§ 60, 70.) If the City Council does not take action on</p>

	<p>Other City Officers and Employees: Subject to the City's civil service provisions, <i>City Manager appoints</i> "all heads or directors of departments of the city and all subordinate officers and employees." (Charter §§ 60, 61.)</p>	<p>an appointment within thirty days, the appointment is deemed confirmed. (SMI § 36.)</p> <p>Other City Officers and Employees: Subject to the City's civil service provisions, <i>Mayor appoints</i> "all heads or directors of departments of the city, and all subordinate officers and employees." (SMI §§ 40(b)(9), 70(d).)</p>
<p><u>Removal Powers</u></p>	<p>Charter Officers: City Manager, City Clerk, City Treasurer, and City Attorney may be <i>removed or suspended by act of the City Council</i>. (Charter §§ 63, 75.)</p> <p>Other City Officers and Employees: <i>City Manager may remove or suspend</i> all officers and employees, subject to the provisions of the civil service system. Employees appointed by the City Manager and exempt from the civil service system can be suspended or removed at the pleasure of the City Manager. (Charter § 61(d).)</p>	<p>Charter Officers: City Manager, City Clerk, City Treasurer, and City Attorney may be <i>removed or suspended at the pleasure of the Mayor</i>. (SMI § 75.)</p> <p>Other City Officers and Employees: <i>Mayor may remove or suspend</i> all officers and employees who are exempt from the civil service system and appointed by the Mayor. (SMI § 75; <i>see also</i> SMI § 61(d) [City Manager assists the Mayor with removal or suspension].) Employees appointed by the Mayor and exempt from the civil service system can be suspended or removed at the pleasure of the Mayor. (SMI § 40(b)(9).)</p>
<p><u>Voting Power</u></p>	<p>Mayor has equal voting power as all other members of the City Council. (Charter § 40(b)(4).)</p>	<p>Prior to the election of a representative from the new ninth city council district, the Mayor would retain equal voting power as all other members of the City Council. (SMI § 30(c).) This power to vote would include the right to vote on a proposal to override the Mayor's own veto.</p>
<p><u>Veto Power</u></p>	<p>No veto power in the current Sacramento Charter.</p>	<p>Mayor would have veto power, subject to a few limited exceptions (e.g., if the City Council passes an emergency measure, or if the City</p>

		Council takes action within its "exclusive purview" or in its capacity as a quasi-judicial body.) (SMI § 40(b)(4).) The Mayor would be able to veto a matter on which the Mayor voted against.
<u>Budget Process</u>	<p>City Manager collects information and requests from departments, offices, and agencies of the City for purposes of preparing and presenting budget recommendations to the City Council.</p> <p>Following a public hearing, the City Council and the Mayor vote on a budget resolution. But, if no budget resolution is passed, then the appropriations from the prior year remain in effect for current operations, until a budget resolution is passed.</p> <p>During the fiscal year, the Council may amend the budget in accordance with the procedure established by the Council.</p> <p><i>(See generally Charter § 111.)</i></p>	<p>The Mayor collects information and requests from departments, offices, and agencies for purposes of preparing and presenting a budget resolution to the City Council.</p> <p>The City Council must hold at least two public hearings before adopting the Mayor's proposal. If the City Council modifies all or part of the budget as proposed by the Mayor, the Council must return the budget resolution to the Mayor within 48 hours.</p> <p>The Mayor would then have the opportunity to approve, veto, or modify any line item. The City Council would then have five days to override the mayor's vetoed or modified budget with a vote of six council members. If the City Council does not approve a budget resolution prior to the start of the fiscal year, then the Mayor's budget as proposed would be deemed approved as presented.</p> <p>During the fiscal year, the budget "may be amended ... upon the request of the mayor and the approval of a majority of the city council."</p> <p><i>(See generally SMI § 111.)</i></p>

APPENDIX B

*Charter Amendments are highlighted.

Amendment	Existing Charter	Proposed Charter
Quasi-Judicial Power	Council §20	Council §20
Investigations/audits	Council §34	Council §34
Use Permits/Planning Commission Appeals	Council §20	Council §20
CEQA compliance	Council §20	Council §20
Employment due process	Civil Service Board §92	Civil Service Board §92
Abatement/Nuisance Declaration	Council §20	Council §20
Resolutions	Council §30	Council §30
Legislative Power		
Enact ordinances	Council §32	Council subject to veto and override §32
Enact Urgency Ordinances	Council §32	Council §32(g)
Enact Budget	Council §111	Council subject to veto and override §111
Resolutions	Council §30	Council §30
Council Administration (agenda, staffing)	Council §§30, 31	Council §§30, 31, 37
Executive Power		
Approve hire of City Manager	Council §60	Council §60
Approve hire of City Treasurer	Council §70	Council §70
Approve hire of City Attorney	Council §70	Council §70
Approve hire of City Clerk	Council §70	Council §70
Approve hire of 500+ Dept. Heads/Directors	CEO §61(d)	Council §40(b)(9)
Terminate/suspend City Manager	Council §63	CEO §60
Terminate/suspend City Treasurer	Council §75	CEO §75
Terminate/suspend City Attorney	Council §75	CEO §75
Terminate/suspend City Clerk	Council §75	CEO §75
Terminate/suspend 500+ Dept. Heads/Directors	CEO §61(d)	CEO §61(d)
Prepare budget/present to Council	CEO §61(j)	CEO §111
Supervise Departments/Administration	CEO §61(b)	CEO §40
Enforce laws/ordinances	CEO §61(a)	CEO §40

APPENDIX C

1 a judicial resolution, and numerous reasons establishing a need for immediate determination of the
2 propriety of allowing the proposed measure on the June 8, 2010, ballot. Those costs and reasons
3 should be considered by this court in determining the propriety of preelection intervention. (*Senate v.*
4 *Jones, supra*, 21 Cal.4th 1142, 1154.)

5 As explained by the California Supreme Court, “a contention that an initiative measure is
6 invalid because the measure cannot lawfully be enacted through the initiative process is a type of
7 claim that generally will not become moot if the initiative is approved by the voters at the election.
8 [Citations.]” (*Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1030.) In
9 other words, if the measure passes, it is still subject to challenge. A challenger could rightly claim
10 that its passage does not cure its inherent unlawfulness. That creates harms through uncertainties and
11 potentially *ultra vires* acts. If, however, the court rules in favor of the proposed measure before the
12 election, many of these uncertainties disappear.

13 1. Harm to the System.

14 One obvious cost is to the election process itself. “The presence of an invalid measure on the
15 ballot steals attention, time, and money from the numerous valid propositions on the same ballot. It
16 will confuse some voters and frustrate others, and an ultimate decision that the measure is invalid,
17 coming after the voters have voted in favor of the measure, tends to denigrate the legitimate use of the
18 initiative procedure.” (*Senate v. Jones, supra*, 21 Cal.4th at p. 1154.)

19 2. Financial Harm.

20 There are direct and concrete costs, or impacts, to City if judicial resolution is deferred until
21 after June 8, 2010. The proposed measure is likely to be the sole City measure on the June 8, 2010
22 ballot. (See Decl. of Stephanie Mizuno, ¶ 3.) The cost to City for placing the proposed measure on
23 the ballot: approximately \$104,000 – a sizeable sum in these bleak public sector budget times. (*Ibid.*)

24 3. Operational and Practical Harms.

25 City government, officials, staff, contractors, and the public will be caught in a perilous legal
26 limbo if the legality of the initiative process awaits review after June 8, 2010, whatever the ultimate
27 outcome of that postelection review. The following are some of the conundrums precipitated by delay
28 in determining the propriety of the initiative process.

1 **a. Uncertainty of Mayor's Attendance at Council Meetings.**

2 The Charter currently provides that the mayor sits as a council member. (Charter, §§ 21,
3 40(b)(4).) The mayor's unexcused absence from five consecutive regular council meetings operates
4 to vacate the mayor's seat. (Charter, § 28.) On the other hand, under the proposed measure, the
5 mayor no longer is a member of the city council, and the office is not vacated by meeting absences.
6 (See proposed §§ 21, 28.) If the proposed measure passes the mayor might reasonably choose to
7 forego council meetings. But if a post-election challenge is successful, with a ruling that the measure
8 was unconstitutional *ab initio*, the mayor may have vacated the seat by missing five meetings.

9 **b. Labor and Employment Uncertainty.**

10 The proposed measure shifts appointment and removal authority over many employees from
11 the city manager to the mayor. (See proposed § 40(b)(9).) And it shifts appointment and removal
12 authority for "Charter officers" from the city council to the mayor. (See proposed §§ 60, 71-73.)

13 If plaintiff's legal challenge is adjudicated only after the election, the mayor, the city council,
14 the city manager, and employee all may be effectively paralyzed by uncertainty as to the legitimacy of
15 appointment or removal decisions. Yet even if they are not paralyzed, employment decisions made
16 between the election and a judicial ruling may need to be overturned. Would the city manager be able
17 to discipline employees during that period? If the measure is upheld, arguably the city manager had
18 no authority to discipline, under proposed Section 40(b)(9). On the other hand, if the measure is
19 overturned, the mayor's appointments might be void. Would appointees lose their positions? How
20 can removed employees be restored to their positions? How can those bells be unrung?

21 **c. Uncertainty in Contracting.**

22 By virtue of the residual powers clause of Charter section 20 and the ordinance authority
23 granted in Charter section 200, the city council now has all powers govern the award contracts and
24 authorize their execution. The proposed measure's deletion of the residual powers clause creates
25 some ambiguity whether the power to contract lies with the city council or mayor.

26 The proposed measure changes Charter section 40(b)(5) so that the mayor shall exercise the
27 authority, power, and duties formerly conferred upon the city manager. Some might argue this grants
28 the mayor the authority to act where the city manager previously did, not only where authorized by

1 the Charter, but also where authorized by ordinance. Under the proposed measure, the mayor would
2 appear to have the city manager's present limited contractual duties under Charter section 200. But
3 the issue is complicated by the proposed Charter section 61(h), which would provide that the city
4 manager's power and duty to execute contracts would arise when authorized to do so by the mayor.

5 Eventually these uncertainties may be resolved. But if the proposed measure passes even an
6 immediate legal challenge cannot avoid a period of uncertainty for those seeking to bind the City by
7 contract, as it is well settled that contracts not complying with the authority granted by a city's charter
8 or municipal code cannot bind a city. (See, e.g., *Miller v. McKinnon* (1942) 20 Cal.2d 83, 88; *Reams*
9 *v. Cooley* (1915) 171 Cal. 150, 154.) In short, City's contracting ability could be compromised –
10 whether the court rules favorably or unfavorably, because neither City nor potential contractors will
11 have certainty about the authority of certain City officials to execute contracts.

12 **d. Creation of the Ninth Council District.**

13 The proposed measure purports to divide the city into nine council districts. (§ 22.) With this
14 year being a federal census year, this new division demands City immediately commence the process
15 for creating the ninth district. At present, there appear to be several constitutional and statutory legal
16 issues implicated by the creation of the ninth district. While these issues are not germane to the legal
17 issues in plaintiff's motion, they will require expenditure of significant resources to address.

18 **e. Creation of Empty Seats on Boards and Joint Powers Authorities.**

19 If the mayor is no longer a member of City's legislative body, the city council, it would have
20 ripple effects on other agencies, as council membership is a requirement for many of them, for
21 example, Regional Transit and SAFCA. (See also Health & Saf. Code, § 33007.) Additionally, as the
22 mayor would assume the duties and responsibilities formerly conferred upon the city manager (see
23 proposed change to § 40(b)(5)), the city manager would be removed, and the mayor seated, on City's
24 retirement system board ("AIFM") and City's retirement hearing commission. (Charter, §§ 381, 389.)
25 Uncertainty over the proposed measure would create uncertainty – or empty seats – on these bodies.

26 **f. Uncertainty About Settlement Authority.**

27 Currently, the City Attorney commences and settles civil lawsuits only pursuant to authority
28 received from the City Council (with limited exceptions). For cases over \$100,000 that authority is

1 received during duly agendized closed session meetings between the city attorney and city council.
2 (See Gov. Code, § 54956.9.) By changing Charter section 20 (the residual powers clause), the
3 proposed measure creates uncertainty over who would authorize entry into and settlement of lawsuits.
4 If it is determined the mayor holds such power, then the mayor could meet privately with the city
5 attorney to discuss the status of litigation cases, approve filing and settlement of lawsuits. Such
6 meetings, of course, would not be subject to the Brown Act, which applies only to meetings of the
7 legislative body. Thus, lingering uncertainty as to the legitimacy of the proposed measure could
8 hamper City's handling of litigation, as well as raise Brown Act compliance issues.

9 ~~IV.~~

10 ~~**CONCLUSION**~~

11 City is neutral on plaintiff's legal arguments on the merits, and leaves the dispositive legal
12 determination - i.e., whether proponent's initiative seeks charter "revision," and as a result is not
13 constitutionally viable - to the court. Despite City's neutral position on the merits, City supports
14 immediate review on the merits of plaintiff's motion. California Supreme Court decisions support
15 preelection review and relief when the question is whether the Charter change is one that may be
16 proposed by initiative. In this case, preelection review can part the clouds of uncertainty. The
17 proposed measure does more than just invigorate lively discussion among politicians, the public, and
18 the press. It raises numerous legal and practical problems that may significantly affect City's
19 operation pending any post-election judicial review.

20 Therefore the City respectfully requests the court consider now the motion for preliminary
21 injunction and render a decision forthwith, to ensure City prudently can pursue any further obligations
22 it has to place the proposed measure on the June 8, 2010, ballot and to avoid the negative
23 consequences attendant to unresolved issues of constitutionality.

24 DATED: January 4, 2010

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25
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